

before the alleged unauthorized access, which is sometimes known as “hacking,” Mr. Pepper left his employment at Ink and became an employee of Wepa directly competing with his former employer Ink.

3. As elements in each count of the Indictment, the government has alleged that Mr. Manzi committed the hacking “for purposes of commercial advantage and private financial gain and the value of the information obtained exceeded \$5000.” Indictment, Counts I-IV. This allegation tracks the statute language, which demarcates the difference between a misdemeanor version of the unlawful access offense and the felony version that is charged here. *See* 18 U.S.C. § 1030(c)(2)(B).

4. At trial, Mr. Manzi will seek to introduce evidence that Mr. Pepper, immediately before his departure as an employee of Ink and his subsequent employment at Wepa, stole proprietary information from Ink and took that information with him to Wepa. Mr. Manzi will further seek to introduce evidence that individuals at Ink became aware of Mr. Pepper’s theft and were very concerned about the competitive impact the purloined information would have in Wepa’s hands. Mr. Manzi will also seek to introduce evidence that some of the stolen proprietary information was present in the Google email account of Mr. Pepper at the time of the alleged hacking of that account described in Counts I and IV of the Indictment. On information and belief, Mr. Manzi believes the government will object to the admission of this evidence on the basis of relevancy.

5. Evidence that Mr. Pepper stole proprietary information from Ink, that people at Ink knew it, and that such information was in fact in one of the accounts allegedly hacked is in fact relevant and highly probative on multiple issues. First, evidence suggesting that the alleged hacker—whomever it was—was attempting to investigate and/or reclaim information stolen

from Ink rather than obtain new information belonging to Wepa would tend to negate the claim that the hacking event “was committed for purposes of commercial advantage and private financial gain.” *See generally* Indictment. No “advantage” or “gain” is involved where someone is simply trying to restore the parties to the status quo.

6. Second, that same evidence would negate the element that the “value of the information obtained exceeded \$5000.” *Id.* Information being restored to its rightful owner, for the purposes of a theft statute such as this one, does not a positive value, it has no value, because it is not stolen.

7. Third, evidence suggesting that Mr. Pepper, likely the government’s star witness, initiated a commercial theft among business competitors is relevant to his credibility as a witness and his bias in testifying.

8. For these reasons, and for the reasons explained in more detail in the brief filed in support of this motion, Mr. Manzi requests a pretrial order in limine finding his proposed evidence to be admissible.

WHEREFORE, the Defendant, Johnathan Manzi, respectfully requests that the Court issue an order in limine finding the evidence summarized above to be admissible in Mr. Manzi’s defense.

THE WEINHARDT LAW FIRM

/s/ Mark E. Weinhardt

Mark E. Weinhardt

AT0008280

2600 Grand Avenue, Suite 450

Des Moines, IA 50312

(515) 244-3100

Email: mweinhardt@weinhardtllaw.com

and

BERRY LAW FIRM
Justin B. Kalemkarian, #25415
6940 O Street, Suite 400
Lincoln, NE 68510
(402) 466-8444
Email: justin@jsberrylaw.com

ATTORNEYS FOR JONATHAN MANZI

CERTIFICATE OF SERVICE

I hereby certify I have caused this document to be filed with the Clerk of the United States District Clerk, District of Nebraska, using the CM/ECF system which sent notification to the government, on January 28, 2022.

/s/ Mark E. Weinhardt
Mark E. Weinhardt, AT0008280